No. 686.

In the Supreme Court of the United States

OCTOBER TERM 1925.

WILLIAM A. RHEA, PETITIONER,

VS.

THOMAS C. SMITH, RESPONDENT.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI.

BRIEF FOR PETITIONER.

The opinion of the Supreme Court of Missouri (R. 18) is not yet officially reported in the state reports, but is reported in *Rhea* v. *Smith*, 272 S. W. Rep. 964-970.

Grounds of Jurisdiction of This Court.

On Oct. 19, 1925 (R. 30), this court granted the petition for a writ of certiorari to the Supreme Court of the State of Missouri to bring up to this court for review the record in the case lately pending in the Supreme Court of Missouri, entitled "William A. Rhea, Appellant vs. Thomas C. Smith, Respondent," petitioner here being the appellant therein.

(1) The judgment of the State Supreme Court was rendered April 13, 1925 (R. 18), and became final on the overruling of appellant's motion for rehearing in that court on May 23, 1925 (R. 30). A duly certified copy of the entire record in said cause, and the petition for writ of certiorari were filed in the office of the clerk of this court August 17, 1925, and due notice given to the respondent of the presentation of the petition for certiorari on the first day of the October 1925 Term of this court.

(2) The petitioner claims title to the real estate in controversy situate in Jasper County, Missouri, by virtue of two execution sales under a judgment of the United States District Court rendered at Joplin in said County, Jan. 10, 1921, and claims that under the Act of Congress, August 1, 1888, C. 729, Sec. 1, 25 Stat. 357 relating to the liens of judgments of Federal District Courts such judgment was a lien on the real estate of the judgment debtor situate in that county from the day of its rendition, the same as if such judgment had been rendered in the state Circuit Court of that county. This claim was made in the trial court in each of the three requested declarations of law asked by plaintiff which were refused (R. 15). The question of whether or not such judgment was a lien was the sole question presented to the State Supreme Court (R. 18-19), and the decision of that court was adverse to such claim (R. 24). The Missouri Supreme Court held in effect that section 1 of the Act of Congress in question is modified by Sec. 1554 R. S. Mo. 1919 which permits the filing of transcripts of Federal Court judg-

ments in the office of the clerk of the State Circuit Court, and provides that the lien of such judgment shall commence from the date of filing of the transcript.

(3) The jurisdiction of this court is invoked under Sec. 237 (b) of the Judicial Code as amended by the Act of Congress Feb. 13, 1925, (43 Stat. ....), providing for review by certiorari of the final judgment of the highest court of the state where is drawn in question the validity of a statute of the United States; and where is drawn in question the validity of the statute of the state on the ground of its being repugnant to the laws of the United States, and also where any title, right, privilege or immunity is especially set up or claimed by either party under any statute of the United States. The jurisdiction of this court is therefore undoubted as has been frequently held, particularly in

Cook v. *Avery*, 147 U. S. 375.
Talbot v. *First National Bank of Sioux City*, 185 U. S. 172.
Crescent City etc. Co. v. *Butchers Union etc. Co.*, 120 U. S. 141.

STATEMENT.

This action was originally instituted in the Circuit Court of Jasper County, Missouri, the petitioner here being the plaintiff, while the respondent here was the defendant in that action.

The petition contained two counts, the first to determine title to certain real estate in Jasper County, Missouri, and the second in ejectment to recover possession of such real estate (R. 2).

There was a judgment for defendant in the trial court (R. 1), and the plaintiff appealed to the Supreme Court of Missouri (R. 1).

The facts are not in dispute, and are briefly stated in the majority opinion of the said Supreme Court (R. 18) as follows:

> "Suit in two counts. The first to determine title to certain real estate in Jasper County, and the second in ejectment to recover possession of such real estate. There was judgment for the defendant in the trial court, and he appealed.
>
> The facts are undisputed. One Blanche H. Whitlock was the common source of title, and January 10, 1921, owned the property in dispute. On that day a judgment in a certain cause in which she was plaintiff, pending in the United States District Court for the Southern Division of the Western District of Missouri, at Joplin, was dismissed and the cost of the case adjudged against her in the sum of $8,890.20. No transcript of this judgment was ever filed in the office of the Clerk of the Circuit Court of Jasper County.
>
> On April 5, 1921, Blanche Whitlock conveyed the property in dispute to the defendant, Thomas

C. Smith, for a consideration of $5,000, of which $2,800 was paid in cash, the purchaser assuming a mortgage on the premises for the balance.

On July 22 1921, execution was issued upon the judgment and by virtue of that execution the United States Marshal sold for $200 to the plaintiff Rhea, a portion of the property in dispute, and by marshal's deed conveyed it to him.

On December ...., 1921, another execution was issued on the judgment under which the marshal sold the remainder of the land in dispute. It was purchased by the plaintiff for $25.00, and conveyance made to him.

It is claimed by appellant that the judgment of the Federal Court was a lien on the real estate from its rendition, that he acquired title through the execution sales and therefore his title was superior to any title acquired by subsequent conveyance of the judgment debtor. Respondent claims that in the absence of a transcript of the same, filed in the office of the Clerk of the Circuit Court of that county, the judgment of the Federal Court was not a lien, and that the conveyance to respondent prior to the execution sales, passed good title."

SPECIFICATION OF ERRORS.

I.

The Supreme Court of Missouri erred in holding that the judgment of the Federal District Court at Joplin was not a lien on the real estate of the judgment debtor in the county where rendered the same as if such judgment had been rendered in the state circuit court of that county.

II.

The Supreme Court of Missouri erred in holding in effect that Section 1554 Revised Statutes of Missouri 1919 deprived the Federal Court judgment of any lien unless and until a transcript thereof was filed with the clerk of the state circuit court of Jasper County, where the federal judgment was rendered.

III.

The Supreme Court of Missouri erred in holding that the repeal of section 3 of the Act of Congress, August 1, 1888, had the effect of destroying the equality of liens of judgments of the Federal District Courts and the state circuit courts in the counties where rendered.

POINTS AND AUTHORITIES.

I.

Under the Missouri statute if the judgment in question had been rendered by the State Circuit Court of Jasper County it would have been a lien on the real estate in controversy from date of rendition. Therefore under Section 1 of the Act of Congress relating to judgment liens the judgment of the Federal Court at Joplin was a lien on such real estate from the date of its rendition.

Secs. 1555, 1556 R. S. Mo. 1919.
Act of Cong. Aug. 1, 1888, Sec. 1 Chap. 729, 25 Stat. 357.
Massingill v. *Downs*, 7 Howard 758.
Dartmouth Sav. Bank v. *Bates*, 44 Fed. 546.
Lineker v. *Dillon*, 275 Fed. 460, 472.
Dermott v. *Carter*, 109 Mo. 21.
Metcalf v. *Watertown*, 153 U. S. 671.

II.

The Missouri legislature while investing judgments of the State Circuit Court of Jasper County with liens on real estate in that county from date of rendition, had no power by the passage of Section 1554 R. S. Mo. 1919 to deprive the judgment of the Federal District Court at Joplin of any lien until a transcript thereof was filed with the clerk of the State Circuit Court.

The Act of Congress prevails over the state statutes.

1 Black on Judgments (1st Ed.) Sec. 414, p. 508.
Massingill v. *Downs*, 7 Howard 758.
Act of Cong. Aug. 1, 1888, C. 729, 25 Stat. 357.

III.

The repeal by Congress of Section 3 of the original Act of August 1, 1888, had the effect of making uniform throughout the Union, instead of destroying, the equality of liens provided for in Section 1 of that Act between judgments of the Federal District Courts and those of state courts of general jurisdiction.

ARGUMENT.

I.

The federal court judgment rendered at Joplin was a lien from date of rendition on land of the judgment debtor in that county by reason of the fact that the state statute accorded such liens to judgments of the state circuit court of that county. The Act of Congress relating to judgment liens in federal district courts puts the federal court judgment lien on equality in every respect with the lien of the judgment of the state circuit court in the county where rendered.

The judgment in question was rendered in the United States District Court for the Southwestern Division of the Western District of Missouri at Joplin in Jasper County, Missouri, on January 10, 1921 (R. 5).

Missouri Statutes Governing Liens of Judgments.

At the time of the rendition of this judgment the Missouri Statutes governing liens of judgments of her state courts (except appellate courts) were as follows.

> Sec. 1555. Lien in courts of record, generally. Judgments and decrees rendered by any court of record shall be a lien on the real estate of the person against whom they are rendered situate in the county for which the court is held.
>
> R. S. Mo. 1919.
>
> Sec. 1556. The commencement, extent and duration of lien. The lien of a judgment or decree shall extend as well to the real estate acquired after the rendition thereof as to that which was owned when the judgment or decree was

rendered. Such liens shall commence on the day of the rendition of the judgment, and shall continue for three years, subject to be revived as hereinafter provided; but when two or more judgments or decrees are rendered at the same term, as between the parties entitled to such judgments or decrees, the lien shall commence on the last day of the term at which they are rendered.

R. S. Mo. 1919.

Sec. 1593. Transcript of judgment a lien in another county, when. Judgments and decrees obtained in any court of record in this state shall, upon the filing of a transcript thereof in the office of the clerk of the Circuit Court of any other county, be a lien upon the real estate of the person against whom such judgment or decree is rendered, situate in the county in which such transcript is filed.

R. S. Mo. 1919.

Section 2850, R. S. Mo. 1919, provides for the filing of the transcripts of judgments of justices of the peace with the clerk of the Circuit Court of the county and for the recordation of the same. Section 2851, R. S. Mo. 1919, provides that every such judgment of a justice of the peace "from the time of filing the transcript shall have the same lien on the real estate of the defendant in the county as is given to judgments of Circuit Courts."

The only provision of the state statute relating to judgments of the Federal courts is found in Section 1554 R. S. Mo. 1919, which, previous to amendment in the revision of 1889, related only to judgments of the State Supreme Court and State Courts of Appeal. That section as then amended is as follows:

> Sec. 1554. Lien of judgment in Supreme Court, Courts of Appeals and Federal Courts in this state. Judgments and decrees obtained in the Supreme Court, in any United States District or Circuit Court held within this state in the Kansas City Court of Appeals, or St. Louis Court of Appeals shall, upon the filing of a transcript thereof in the office of the clerk of any Circuit Court, be a lien on the real estate of the person against whom such judgment or decree is rendered, situated in the county in which such transcript is filed.
>
> R. S. Mo. 1919.

The Act of Congress relating to liens of judgments of Federal District Courts in force at the time of the rendition of the judgment in question consisted of Sections 1 and 2 of the Act of August 1, 1888, 25 Stat. 357, reading as follows:

> Sec. 1. Judgments and decrees rendered in a (Circuit or) District Court of the United States within any state shall be liens on property throughout such state in the same manner and to the same extent and under the same conditions only as if such judgments and decrees had been rendered by a court of general jurisdiction of such state: Provided, that whenever the laws of any state require a judgment or decree of a state court to be registered, recorded, docketed, indexed or any other thing to be done, in a particular manner, or in a certain office or county, or parish in the State of Louisiana, before the lien shall attach this act shall be applicable therein whenever and only whenever the laws of such state shall authorize the judgments and decrees of the United States Courts to be registered, recorded, docketed, indexed or otherwise conformed to the rules and requirements relating to the judgments and decrees of the courts of the state.

> Sec. 2. The clerks of the several courts of the United States shall prepare and keep in their respective offices complete and convenient indices and cross indices of the judgment records of said courts, and such indices and records shall be at all times open to the inspection and examination of the public.

By Section 1555, R. S. Mo. 1919, it is provided that judgments rendered by any court of record "shall be a lien on the real estate of the person against whom they are rendered, situate in the *county* for which the court is held."

By section 1556, R. S. Mo. 1919, it is provided that "such liens shall commence on the *day of the rendition* of the judgment, etc."

In order to make the judgment a lien outside the county where rendered, Section 1593, R. S. Mo. 1919, requires a transcript thereof to be filed in the office of the clerk of the Circuit Court of any other county where a lien is sought to be had.

By Section 1 of the Act of Congress of August 1, 1888, *supra*, judgments of Federal District Courts within any state are declared to be liens on real estate "in the same *manner* and to the same *extent* and under the same *conditions only* as if such judgments and decrees had been rendered by a court of *general jurisdiction* of such state.

The Circuit Court is the state court of general jurisdiction in Missouri.

> "Courts of general jurisdiction are courts which take cognizance of all causes, civil or criminal, of a particular nature."
> 15 C. J. Sec. 2, p. 718.

> "General jurisdiction is such as extends to all controversies which may be brought before a court within the legal bounds of rights and remedies."
>
> 15 C. J. Sec. 14, p. 726.

The "court of general jurisdiction of such state" referred to in Section 1 of the Act of Congress, *supra*, is in Missouri the State Circuit Court. This by virtue of Section 22, Article VI of the Missouri Constitution, which reads as follows:

> Sec. 22. The Circuit Court shall have jurisdiction over all criminal cases not otherwise provided for by law; exclusi original jurisdiction in all civil cases not otherwise provided for, and such concurrent jurisdiction with and appellate jurisdiction from inferior tribunals and justices of the peace as is or may be provided by law. It shall hold its terms at such times and places in each county as may be by law directed, but at least two terms may be held every year in each county.

Section 24 of the same article provides that the state shall be divided into convenient circuits of contiguous counties and that one circuit judge shall be elected for each circuit. There are now 36 judicial circuits in the state.

> "The circuit court is a court of general jurisdiction."
>
> *State* v. *Eyermann*, 172 Mo. 294, 303.

> "The circuit court is a superior court of general jurisdiction."
>
> *Davidson* v. *Schmidt*, 256 Mo. 18, 19.

The majority opinion does not dispute the proposition that the circuit court is in Missouri the only state court of general jursdiction (R. 22).

An examination of Sections 1555 and 1556 of the state statute, *supra,* will disclose the fact that the lien given by these sections takes effect immediately without any requirement that the judgment be theretofore or thereafter "registered, recorded, docketed, indexed, or any other thing to be done in a particular manner or in a certain office or county." Under the state statute where the judgment creditor wishes to obtain a lien on the real estate of the judgment debtor in some county other than the county in which the judgment is rendered it is provided by Section 1593, *supra,* that he may do so by filing a transcript thereof with the clerk of the circuit court of the county where the extended lien is sought. This he may do in as many counties in the state as he may see fit.

If, therefore, Congress, by Section 1 of the Act of August 1, 1888, intended to invest judgments of the federal district courts with the same liens as judgments of the state circuit courts in Missouri it must needs follow that the judgment in question was a lien on the real estate in controversy situated in Jasper County, from the day of its rendition; and that a transcript of this judgment would be required only in case the judgment creditor sought to extend his lien to some other county than the one in which Joplin is situate. To hold that the federal judgment was not a lien in the county where rendered while state circuit court judgments were more favored in that respect would be to ignore the plain mandate of Congress; and would, as was well said by Mr. Justice McLean in *Massingill* v. *Downs,* 7 Howard, 758,

> "* * * materially affect and in some degree subvert the judicial power of the Union. It would place suitors in the state courts in a much better condition than in the federal courts."

II.

The Missouri Legislature could not by the passage of Section 1554 deprive the federal court judgment of a lien until a transcript thereof was filed with the clerk of the State Circuit Court of Jasper County. The right of this judgment to a lien is conferred by the Act of Congress and does not have its origin in this section of the state statute. If there be a conflict between the two statutes, then the Act of Congress must prevail over the state statute.

The majority opinion below, after referring to the fact that under Section 1554 of the state statute judgments of the state appellate courts are not liens upon rendition but must be transcripted and filed locally to become liens, and that this section was the only one relating to federal judgments said (R. 20):

> "In that respect district and circuit courts are put on the same basis as state courts having a territorial jurisdiction more than one county."

The writer of that opinion here overlooked the fact that Congress had the *sole* and *exclusive* power to determine and did determine the *basis* on which the judgments of federal courts should be put. The state legislature had no such power. Congress specified as its *basis* the state court of "general jurisdiction," a trial court having jurisdiction most nearly like that of the federal district (and then circuit) courts. The

state could not change the basis thus fixed by Congress. Congress was not concerned with the territorial jurisdiction of the state court specified by it, but was concerned only, with the nature of its jurisdiction. It was not concerned with the territorial limits within which the designated state court might exercise its jurisdiction. The basis or standard thus fixed by Congress was overlooked by the writer of the majority opinion. Consequently he fell into the error of looking to Section 1554 instead of the Act of Congress as the *source* of the *right* to a lien of the federal court judgment.

When the legislature of Missouri undertook the task in 1889 of making provision for transcripting federal court judgments and of filing these transcripts with the clerks of their state circuit courts in counties where the judgment was not already a lien, it should have selected what is now Section 1593 instead of Section 1554 as the proper place for the insertion of this amendment. Had the legislature done so, it would have been in recognition of the right of Congress to *create* the lien in conformity with judgments of state circuit courts and would have made provision at the proper place for extending this lien to other counties than the county where the federal judgment was rendered. This would have put the state statute in perfect harmony with the Act of Congress. Had this been done the opinion below would doubtless have been in favor of and not against petitioner's claim of title.

The Missouri legislature had full power to restrict the liens of judgments of its state supreme court and

state appellate courts and to require as a condition precedent to the commencement of such liens that a transcript of the judgment must be filed in any county where a lien was sought to be had on the judgment debtor's real estate. Not so, however, as to the federal court judgments.

If as interpreted by the majority opinion, the legislature attempted to put the judgments of the federal district courts in the same category as judgments of the state appellate courts and thus deprive the federal judgment of its lien in the county where rendered, the legislature exceeded its authority. If the legislature had the power to deprive the federal court judgment of its lien until a transcript thereof was filed, it could postpone this lien indefinitely and without limitation.

Looking again to Section 1555 of the Missouri Statutes *supra*, we find that it provides that judgments rendered by "any court of record" shall be liens in the county where rendered.

The circuit Court of Jasper County, Missouri, was not the only state court of record in that county. The probate court was likewise a court of record, under Section 34, Article VI of the state constitution, which provides as follows:

> Sec. 34. The general assembly shall establish in each county a probate court which shall be a court of record and consist of one judge who shall be elected. Said court shall have jurisdiction over all matters pertaining to probate business, etc."

The county court was also a court of record. Section 36, Article VI the state constitution provides as follows:

> Sec. 36. "In each county there shall be a county court which shall be a court of record and shall have jurisdiction to transact all county and such other business as may be prescribed by law."

Within the limits of their respective jurisdictions probate courts and county courts in Missouri frequently have occasion to render judgments for the recovery of money. These judgments are by Section 1555, *supra*, made liens on the real estate of the judgment debtor in the county and this lien by Section 1556, *supra*, is effective from the day of the rendition of the judgment, the same as if rendered in the state circuit court.

Considering again the question of what courts are held in Jasper County, Missouri, we find that there is a federal district court held at Joplin, being the Southwestern Division of the Western District of Missouri, that division embracing the eight counties of Barry, Barton, Jasper, Lawrence, McDonald, Newton, Stone and Vernon (Section 91 of Judicial Code).

In The L. B. X. 88, Fed. 290, 295, Judge Adams, one of the ablest judges who ever adorned the federal bench of Missouri, after considering the various Acts of Congress relating to federal courts in Missouri, said:

> "It is manifest that Congress never intended these subdivisions of a district as mere convenient arrangements for holding the courts of the dis-

> trict. This appears from the specific and accurate language employed which is entirely inconsistent with such intent and also from the language employed in other acts creating courts for mere convenience."

The distinctive character of each of these divisions mentioned by Judge Adams, *supra,* was later recognized and clearly established by Section 53 of the Judicial Code. The language, therefore, of the majority opinion (R. 22) to the effect that the federal court

> "may hear a case in Jasper County and render judgment in the case in Greene County, or Jackson County, or, as sometimes happens, the court may hear part of the evidence in one county and the remainder in another, and render judgment in a third and pass upon a motion for re-hearing in a fourth," is inaccurate, save only in bankruptcy cases.

In addition to the Federal Court at Joplin, there are as has been shown, three state courts of record, viz.: the circuit court, probate court and county court. There are also justice of the peace courts, not courts of record. The judgments of these latter courts become liens on real estate on filing of transcripts in the office of the clerk of the state circuit court.

Now the effect of the majority opinion below is to place the judgments of the Federal District Court at Joplin on a lower plane than the judgments of either the state circuit court, probate court or county court of Jasper County and to put them on equality only with *judgments of justices of the peace* of that county. *Hinc illae lacrimae.*

Again it is said in the majority opinion (R. 22):

> "Evidently it was the policy of the law to have one definite place where a person might go to ascertain whether there are any judgment liens affecting real estate in which he might be interested; he would not have to go to several places."

As will be seen under point III of this argument the statutes in many states have provided one place at which judgments of every state court must be docketed, or registered in some form, before becoming liens. In such states Congress evidently intended by Sec. 1 to require such docketing or registration of the judgments of Federal District Courts therein. This purpose was not accomplished however until the repeal of section 3 of that Act. But as has been previously stated there is not any *one place* or any *one office* in Jasper County, Missouri, where *all* the judgments of the state courts of record which are liens on real estate in the county may be found. The records of the probate court and of the county court, each a court of record, are kept separate and distinct from those of the state circuit court. Therefore, a person wishing to determine whether or not there are any state court judgment liens against a debtor's real estate must examine not only the records of the state circuit courts, but likewise those in the probate and county courts.

Again in the majority opinion it is said (R. 23):

> "The alleged discrimination in favor of a State Court against a Federal Court, sitting in the same county, is only apparent. The provision that the lien of a judgment shall begin from its rendition means on the same day of its rendition.

> It would *take but a short time* to transcribe a judgment of the Federal Court and file it with the Clerk of the State Court on the day of its rendition, and *thus* put it *on par* with the judgment of the State Court rendered on the same day." (Italics ours.)

It is submitted that the very language of the majority opinion discloses the fallacy of its ruling. If, as is conceded, the state court judgment is a lien without transcripting, docketing, or recording elsewhere than on the journal entry evidencing the judgment, then the same status must be given to the federal court judgment; otherwise the latter is *inferior* to the former. To say that it would take but a *short time* to transcript the federal judgment and file it in the state circuit court and thus comply with requirements of section 1554 of the state statute is no argument in favor of injecting into the federal statute any such requirement. It would manifestly take *some* time to have the federal judgment written out and transcripted. It would likewise, of necessity, take some *more* time to go from the federal court to the state court. Lapse of that time, however short, might well be fatal to the lien of the federal judgment. It can well be seen that both courts might be sitting at the same time and that judgments might be rendered in each court just before the conclusion of the business of the day, that immediately thereafter both courts would adjourn and their respective clerk's offices be closed. In such case it might not be possible for the suitor in the federal court to secure a transcript of his judgment and file the same in the state circuit court until the day fol-

lowing. The state judgment would be a lien from rendition and therefore one day ahead of the federal judgment. The two judgments can be put on equality only by according each a lien from the day of rendition, without regard to the performance of any condition subsequent.

Perfect harmony between Section 1554 of the state statute and Section 1 of the Act of Congress can be had only by construing the former as not in any manner restricting the right to or commencement of the lien conferred by the latter, but as making provision for the extension of this lien to other counties than the one where the federal judgment is rendered. Such is the construction given in the dissenting opinion below. Construing Section 1 of the Act of Congress it is there said (R. 27):

> "Taking by itself the language of that part of section 1 of the federal act preceding the proviso, I think there can be no doubt that the judgment we are considering became a lien upon the property here involved from the day of its rendition. The language 'in the same manner and to the same extent and under the same conditions' is broad enough to make a federal court judgment a lien in the county where it is rendered without filing a transcript thereof, *if a judgment of the state court of general jurisdiction constitutes such lien.* 'In the same manner' and 'under the same conditions' can mean nothing else. 'To the same extent' may refer to the kind of property to which such lien attaches or to the territorial extent of the lien or to both. If a state makes its judgments a lien on real estate only, then federal judgments become liens on such property only. If such lien extends only to the coun-

ty, then the lien of the federal court judgment is so limited. The status of the lien of a judgment of the state court of general jurisdiction fixes the status of the lien of federal court judgments *in every respect*. Such is the only meaning which can fairly be given to section 1 of the federal act."

Further on in this dissenting opinion construing section 1554, it is said (R. 29):

"The majority opinion, as does respondent, lays much stress upon section 1554 of our statute, which provides that judgments obtained in the supreme court, the court of appeals and federal trial courts shall be liens in *any* county in the state wherein a transcript thereof shall be filed. Apparently this section is one making provision for a lien broader in territorial application than the lien attaching upon mere rendition of the judgment. It apparently has no reference to the latter sort of lien.

"It required no action upon the part of the Missouri Legislature to give a lien to a judgment of the federal district court. That is the exclusive prerogative of Congress. Therefore, our legislature, in enacting section 1554, undertook to do nothing more than to put federal court judgments upon an equality with state court judgments by authorizing the filing of transcripts thereof in any county of the state and providing for a lien therein upon such filing.

"Section 1554 is the conformity statute of Missouri without the enactment of which the act of Congress of 1888 would have no application whatever to federal court judgments rendered in this state. If that section be construed by us as requiring the filing of a transcript of a federal court judgment in the office of the clerk of the circuit court of the county wherein such federal court judgment is rendered, then Missouri has

passed no adequate conformity law and the judgment of appellant must be held to be a lien throughout the territorial jurisdiction of the federal district court which rendered it, including Jasper County."

III.

The repeal by Congress of Section 3 of the Act of August 1, 1888, did not destroy the equality of liens of federal and state court judgments conferred by Section 1 of said Act.

As originally enacted the Act of Congress, August 1, 1888, consisted of three sections; sections 1 and 2 have been herein previously set out in full. As originally enacted, section 3 of that act was as follows:

> "Nothing herein shall be construed to require the docketing of a judgment or decree of a United States court or the filing of a transcript thereof, in any state office within the same county or parish in the State of Louisiana, in which the judgment or decree is rendered in order that such judgment or decree may be a lien upon any property within such county."

This section was amended by the Act of March 2, 1895, c. 180, 28 Stat. 814, making some verbal changes and by adding to the end thereof the further clause:

> "If the clerk of the United States court be required by law to have a permanent office and a judgment record open at all times for public inspection in such county or parish."

It will be noted that section 91 of the Judicial Code and the previous acts of Congress relating to the southwestern division of the Western District of Mis-

souri provided for the maintenance at all times of a clerk's office in charge of himself or a deputy at Joplin, as well as in each of the other divisions.

Said section 3 as originally enacted was repealed by the Act of August 17, 1912, c. 300. 37 Stat. 311, without reference to the amendatory act of March 2, 1895. This latter amendatory act was in turn repealed by the Act of August 23, 1916, c. 229, sec. 1, 39 Stat.

.....

Section 2 of said act of August 23, 1916, provided that the act was to take effect January 1, 1917.

The majority opinion below lays great stress on the repeal of section 3 of the act of August 1, 1888. In that opinion it is said (R. 21, 22):

> "The act of Congress must be construed according to its terms set out in sections 1 and 2; it must be construed with reference to the repeal of section 3, and some significance must be attached to the act of Congress in repealing that section. Without that section, transcripts of judgments of a federal court were required to be filed in the county records when transcripts of judgment in state courts were required to be so filed. Section 3 relieved a judgment creditor in the federal court from that requirement in a certain instance. The repeal of the section shows an intent to make that requirement."

In the dissenting opinion below in dealing with the repeal of section 3 of the act of August 1, 1888, it is well said (R. 28):

> "The provision that a federal court judgment should be a lien upon rendition in the county where such judgment was rendered without filing a transcript therein gave an advantage to

federal judgment creditors not possessed by judgment creditors in the courts of those states which require particular steps to be taken in addition to the mere rendition of a judgment before it becomes a lien in the county where rendered and section 3 tended to prevent the complete harmony and conformity aimed at in section 1. A very good and completely satisfying reason for repealing section 3 is found in the evident purpose of Congress to put federal judgments on exactly the same footing as state judgments. The enactment of section 3 failed to accomplish this in all cases and its repeal did effectually accomplish such purpose in all cases and in every state. It is inconceivable to me, as it is contended in respondent's brief, that, by such repeal, Congress intended that judgments of federal courts should not become a lien in the county where rendered unless and until a transcript thereof is filed in the circuit clerk's office, while the state court judgment becomes a lien therein without such procedure. Such a purpose would be in hopeless conflict with the purpose expressed in section 1."

Prior to the passage of the Act of August 1, 1888, *supra*, a judgment of the federal court in Missouri was held to be a lien from the time of its rendition on all real estate of the defendant throughout the judicial district; and when Missouri constituted but one judicial district, the lien was held to exist throughout the entire state.

Dermott v. *Carter*, 109 Mo. 21.

This decision of the Missouri Supreme Court was in harmony with the decisions of this court.

Metcalf v. *Watertown*, 153 U. S. 671, 678.

At the time of the passage by Congress of the act of August 1, 1888, judgment liens of state courts depended and still depend on a great variety of statutory conditions. In many of the older states, particularly in New England, judgments are not liens on real estate until the issuance of a writ of execution and the levy thereon by the officer executing this writ. This is also true in Kentucky and Michigan. In a majority of the states judgments become liens on real estate only after being recorded, indexed, docketed, enrolled or registered in some particular local office.

34 C. J., Sec. 885, p. 576.

In 1 Black on Judgments (1st Ed.), Sec. 404, p. 497, it is said:

> "It is a general statutory requisite that judgments shall be duly entered upon the docket before they can become liens upon the debtor's realty, at least as against subsequent purchasers in good faith."

And in section 405, page 498, the same author says:

> "In many of the states there is a further statutory requirement, designed for convenience and expedition in making searches, that the judgment be duly *indexed.*"

An examination of the statutes of the various states will disclose a very great variety of statutory requirements of things to be done before judgments become liens. For instance, in Alabama, under section 4156 Alabama Code 1907, before the judgment of any court can become a lien, a prescribed certificate

must be filed with the probate judge. In Louisiana under articles 3321, 3367 Merricks Rev. Code 1912, the judgment must be recorded in the mortgage office. In New York the judgment of every court must be filed with the county clerk and by him docketed (Secs. 509, 510 Civil Practice Act). In Colorado a transcript of the judgment must be filed with the county recorder (Sec. 3609 R. S. Colo. 1908). In Texas the judgment must be recorded and indexed on the judgment roll in the county clerk's office where deeds and mortgages are recorded. So in a majority of the states it will be found that the judgment does not become a lien upon rendition but only after being docketed, indexed, or registered at some particular place or in some particular office.

On the other hand, in many of the states, like Missouri, judgments of courts of record are by statute made liens on the debtor's real estate in the county from the date of rendition.

When Congress passed the act of August 1, 1888, the evident purpose expressed in section 1 of that act to put federal judgments on absolute equality as to liens with state judgments was destroyed by section 3 of that act in those states where the state judgments were not liens until levy on execution; also in those states where judgments were not liens upon rendition but became liens only after being docketed, enrolled, indexed, recorded or registered elsewhere. Therefore, as will be seen section 3 which made the federal court judgment a lien in the county where rendered from the date of rendition, in every state, put the federal court

judgment as to its lien ahead of the state court judgments in all those states. But by the repeal of section 3 the purpose of Congress to put the federal and state court judgments on absolute equality as to lien was fully effected.

In Missouri section 3 had no effect at any time to give the federal court judgments any priority over the state court judgments. Each, by the statute conferring its lien, was a lien on real estate of the judgment debtor in the county where rendered from the day of its rendition. There was no conflict in Missouri between the state and federal statutes while section 3 of the act of August 1, 1888, was in force. Manifestly its repeal by Congress did not alter in any respect the status of the lien of the federal court judgment in that state.

The decision of the circuit court of appeals of the fifth circuit in *Jackson Light and Traction Co.* v. *Newton,* 269 Fed. 223, much relied upon by the majority opinion is not in point. That case was controlled by the Mississippi statute which is wholly unlike the Missouri statute. Under section 819 of the Mississippi Code 1906 it is provided that a judgment shall not be a lien on any property of the defendant thereto unless the same be enrolled within twenty days from rendition in the judgment roll provided for by section 818.

The federal judgment was rendered on May 10, 1918, and was not enrolled on the judgment roll in the office of the clerk of the circuit court of Hinds County, Mississippi, until April 4, 1919, almost *eleven months*

after its rendition. A state court judgment in Mississippi not enrolled within twenty days from its rendition was not a lien and the federal court judgment not having been enrolled within the statutory period was properly declared no lien.

Some of the language of the learned judge who wrote that opinion is quite likely to be misunderstood except when considered carefully in connection with the Mississippi statute. Again the language on page 226 of that opinion with regard to there being no discrimination when the Mississippi statute *put* the federal judgment on a *par* with the judgments of the state supreme court indicates that the author, like the author of the majority opinion below, did not constantly bear in mind the fact that the right of the federal judgment to a lien flowed, not from the particular section of the statute of Mississippi under consideration, but did flow from and originated in section 1 of the act of Congress.

Giving effect therefore to the plain terms of section 1 of the act of Congress in question, it must be held that the judgment of the federal district court at Joplin was a lien on the real estate in controversy from the day of its rendition, just the same as if the judgment had been rendered in the state circuit court. In no other way could perfect equality of liens between the judgments of the two courts be accomplished.

It is respectfully submitted that the dissenting opinion in the instant case correctly interprets the state and federal statutes; that this opinion is in har-

mony with the underlying principles involved and should, in substance, be adopted as the opinion of this court.

The petitioner therefore prays that the judgment below be reversed.

Respectfully submitted,

THOMAS HACKNEY,
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Kansas City, Missouri,
April 20, 1926.